

Berninger



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Survice Engineering Company  
**File:** B-235958  
**Date:** July 20, 1989

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### **DIGEST**

General Accounting Office will not consider a challenge to the Small Business Administration's (SBA) determination that a bidder is a small business concern since by statute SBA has conclusive jurisdiction in such matters.

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### **DECISION**

Survice Engineering Company protests the award of a contract to McLean Research Center (MRC) under request for proposals (RFP) No. DAAL02-88-R-9068, issued by the Army as a total small business set-aside. Survice challenges MRC's eligibility for the contract award, arguing that MRC does not qualify as a small business.

We dismiss the protest.

Survice and MRC submitted proposals under the RFP by the closing date, July 29, 1988, and certified their status as small businesses. After the closing date, however, MRC was approached by Wackenhut Advanced Technologies Corporation, a large business, regarding a proposed merger. MRC accepted Wackenhut's offer and the merger was completed on April 28, 1989, the same day the Army announced its intent to award the contract to MRC.

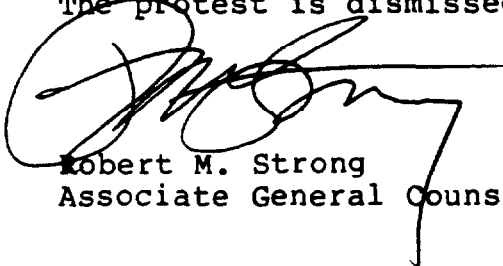
On May 9, Survice filed a protest challenging MRC's size status with the contracting officer, who referred the protest to the Small Business Administration (SBA). SBA determined that MRC is a small business concern for purposes of this procurement despite its subsequent merger with a large business since its size status as of the date of the self-certification in its offer is controlling. On June 21, 1989, Survice filed its protest with our Office, challenging SBA's decision.

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Our Office will not consider a protest regarding a firm's status as a small business concern, since SBA is vested with conclusive statutory authority to determine matters of small business size status of federal procurements. See 15 U.S.C. § 637(b)(6) (1982); 4 C.F.R. § 21.3(m)(2) (1988); Antenna Products Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. In any event, SBA's decision clearly was consistent with the applicable SBA regulation, 13 C.F.R. § 121.5(a), which provides that the size status of a concern is determined as of the date of its written self-certification as part of the concern's submission of a bid or offer. Therefore, since SBA found and Service does not dispute that MRC was a small business on the date of its self-certification, MRC qualifies as a small business for purposes of this procurement regardless of its status after the closing date for receipt of proposals.

Finally, to the extent that the protester objects to SBA's rule that size is to be determined as of the date of self-certification, we note that this is not a matter for our consideration in view of SBA's conclusive statutory authority to determine size status issues. Hornes Motor Lodge, B-225688.3, Oct. 15, 1987, 87-2 CPD ¶ 361.

The protest is dismissed.



Robert M. Strong  
Associate General Counsel